

Editor's note: Appealed -- rev'd, Civ.No. C84-0033 (D.Wyo. Nov. 20, 1984); appeal dismissed on Gov't's motion (Feb. 21, 1985); order to show cause why Secy. should not be held in contempt for failure to issue lease per Nov. 20 order; rev'd on D.Ct. order to issue lease, No. 85-2560 (10th Cir. Oct. 26, 1987)

ROCKY MOUNTAIN EXPLORATION CO.

IBLA 83-328

Decided October 31, 1983

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. W-83878.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing

Where an automated simultaneous oil and gas lease application part B, Form 3112-6a (June 1981), does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number selected or assigned in part A, Form 3112-6 (June 1981), it is not properly completed and must be rejected.

APPEARANCES: David L. Allin, vice president, Rocky Mountain Exploration Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Rocky Mountain Exploration Company has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 22, 1982, rejecting its simultaneous oil and gas lease application, W-83878.

Appellant's application was drawn with first priority for parcel WY-229 in the November 1982 simultaneous oil and gas lease drawing. In its December 1982 decision, BLM rejected appellant's application because the BLM applicant number (BAN) on part B of the automated simultaneous oil and gas lease application form (742-08-6980) did not match the BAN on part A of the application form (742-08-6890). BLM concluded in part that the application was not properly completed in accordance with 43 CFR 3112.2-1(g).

In its statement of reasons for appeal, appellant states that:

Our previously filed part "A" form correctly indicated our employer identification number (EIN) and has been on file for sometime. It should be obvious to all concerned that the transposing of two digits of our EIN on the September, 1982, Part "B" form was a simple error of a typographical nature.

Appellant contends that BLM cannot properly reject a simultaneous oil and gas lease application where the error does not clearly violate a Departmental regulation, citing Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979), and Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980). Appellant notes that the requirement to indicate an EIN on part B of the automated simultaneous oil and gas lease application which corresponds to the EIN on part A was "clarified" only after the filing of its application by a notice in the Federal Register. See 47 FR 53508 (Nov. 26, 1982).

[1] The applicable regulation, 43 CFR 3112.2-1(a), provided at the time appellant filed its simultaneous oil and gas lease application that such an application must be "on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart." In addition, 43 CFR 3112.2-1(g) provided that the "properly completed and signed lease application shall be filed in the proper office of the Bureau of Land Management." (Emphasis added.) There was no requirement in the regulations that the identification numbers on parts A and B of the simultaneous oil and gas lease application must match. However, the instructions to part B, Form 3112-6a (June 1981), state under the heading "Social Security Number": 1/ "With a lead pencil, print in the appropriate squares the number used by the applicant on Part A and mark the corresponding circles."

We have consistently held that the proper completion of a simultaneous oil and gas lease application is a mandatory requirement and that failure to properly complete such an application must result in rejection of the application pursuant to 43 CFR 3112.6-1(a). 2/ See, e.g., H. L. McCarroll, 55 IBLA 215 (1981). Under section 17(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(c) (Supp. V 1981), the Department is authorized to issue a noncompetitive oil and gas lease only to the first-qualified applicant. See Udall v. Tallman, 380 U.S. 1 (1965). An applicant who has failed to comply with the regulatory requirement that a lease application be "properly completed," as explicated on the application form itself, is simply not the first-qualified applicant. Cretaceous Partnership, 75 IBLA 203 (1983), and cases cited therein. 3/

In Shaw Resources, Inc., 73 IBLA 291 (1983), we specifically held that BLM must reject a simultaneous oil and gas lease application where part B, Form 3112-6a (June 1981), was not properly completed by insertion of the same identification number as indicated on part A, Form 3112-6 (June 1981). We explained the practical necessity for proper completion of part B in this manner, as follows:

1/ Although the number is designated "Social Security Number," it may be a person's social security number, a business entity's employer identification number, or a number assigned by BLM.

2/ 43 CFR 3112.6-1(a) provided that "[a]ny application which is not filed in accordance with § 3112.2 of this title * * * shall be rejected."

3/ Effective Aug. 22, 1983, the Department amended 43 CFR 3112.2-1(a) to require that a simultaneous oil and gas lease application must be "on the form approved by the Director, completed, signed and filed pursuant to the instructions in the application form and to the regulations in this subpart." 48 FR 33678 (July 22, 1983) (emphasis added).

The automated form, which is machine readable, is designed to accommodate the automated processing of simultaneous oil and gas lease applications. The development of the automated process is a result of BLM's efforts to expedite the issuance of leases and lessen the paperwork burden. 46 FR 55783, 55784 (Nov. 12, 1981).

The application form consists of two parts, A and B. Part A, which should be submitted only with the applicant's first filing under the automated process, enables BLM to record the applicant's name and address. Part B identifies all parcels which the applicant desires to lease and a separate Part B is submitted for each drawing. The identification number appearing on both parts is the coordinating feature between them.

* * * * *

* * * [A]ll Part B filings must correspond with a Part A filing on record. Part B instructions direct the applicant to "print in the appropriate squares the number used by the applicant on Part A." That number is the feature which, when processed by machine, will distinguish the application as distinctly that of the applicant. Without using the same number as used in Part A, Part B cannot be efficiently processed. The rule requiring proper completion of the approved application form promotes the efficient administration of the simultaneous oil and gas leasing program in view of the number of applications submitted. James M. Chudnow, 68 IBLA 377 (1982).

Id. at 292-94. 4/

The present case is distinguishable from the cases of Winkler v. Andrus, supra, and Brick v. Andrus, supra, cited by appellant. In Winkler, the court concluded that the Department could not reject a drawing entry card (now a simultaneous oil and gas lease application) filed inadvertently in the name of J. A. Winkler Agency and signed by Joseph A. Winkler where the Department had been informed on appeal that the card should have been in the name of Joseph A. Winkler. Similarly, in Brick, the court concluded that the Department could not reject a drawing entry card for failure to enter the offeror's name in the proper order indicated by the instructions on the card -- last name, first name, middle initial. In both cases, there was held to be no clear violation of Departmental regulations. Moreover, in the case of Brick, the court concluded that the Department had not applied the applicable rule consistently.

4/ We note that by Federal Register notice, BLM informed the public that a simultaneous oil and gas lease application "shall be rejected" in part where the automated forms "contain information on Part B (Form 3112-6a) that does not correctly correspond to information on Part A (Form 3112-6)." 47 FR 53508 (Nov. 26, 1982). While this notice was published after the filing of appellant's application, such application, nevertheless, runs afoul of the Departmental regulations in effect at the time of the filing.

The present case is similar to Winkler and Brick only in the sense that the violation of Departmental regulations stems from a failure to abide by the instructions on the application form itself. However, as construed by the courts in Winkler and Brick, this failure was a matter of form and not of substance. In Brick v. Andrus, *supra* at 216 n.8, the offeror had supplied "all of the required information," but had simply failed to enter his name in the proper order. In Winkler v. Andrus, *supra* at 778, the inclusion of the word agency was treated as "surplusage," where the Department had been informed on appeal that the drawing entry card should have been in the name of an individual. In the present case, the identification number on part B of appellant's application simply did not match the number on part A. Accordingly, the efficient processing of part B was impeded and, consequently, the eventual issuance of an oil and gas lease. In this sense, we believe that the supplying of incorrect or inconsistent information on an oil and gas lease application is comparable to the omission of information which the court in Brick found would violate Departmental regulations. See William C. Reuling, 59 IBLA 226 (1981), *aff'd* Reuling v. United States, Civ. No. 82-0058 B (D.N.M. July 22, 1983). Moreover, the regulation in effect at the time of Winkler and Brick, 43 CFR 3112.2-1(a) (1975), merely required that a drawing entry card be "fully executed." The regulation applicable herein requires that the lease application be "properly completed." 43 CFR 3112.2-1(g) (emphasis added). We believe that such language may reasonably be construed to require insertion of an identification number on part B of the application corresponding to the number on part A, as clearly provided by the instructions. As noted above, failure to abide by the instructions in completing a lease application has consistently been held to require rejection of the application. This requirement to abide by the instructions is now codified in 43 CFR 3112.2-1(a) (48 FR 33678 (July 22, 1983)). 5/

5/ Appellant also asserts that BLM improperly included its lease application in the simultaneous drawing and retained the filing fee. Appellant's application was included in the drawing because the erroneous identification number was "not apparent on the face of the Part B filing." Shaw Resources, Inc., *supra* at 294. Rejection of the application therefore occurred after it had been processed in accordance with 43 CFR 3112.6-1, which provided that: "Filing fees for rejected filings are the property of the United States and cannot be returned." In Shaw Resources, Inc., *supra* we upheld retention of the filing fee. The current regulation, 43 CFR 3112.3 (48 FR 33679 (July 22, 1983)), provides for the retention of \$75 as a processing fee in certain circumstances where the part B filing is considered to be "unacceptable." In the case of rejection of an application which is "accepted for selection," the current regulations provide that the "filing fee [be] retained." 43 CFR 3112.3(e) (48 FR 33679 (July 22, 1983)).

Therefore, we conclude that BLM properly rejected appellant's simultaneous oil and gas lease application for failure to comply with 43 CFR 3112.2-1(a) and (g).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge

